

REMARKS/ARGUMENTS

Claims 1-114 are active in this application.

Contrary to the Examiner's statement on page 2 of the Office Action, arguments were presented as to why the Examiner's restriction was improper (see Restriction Response filed November 13, 2003). Furthermore, Once the elected claims are allowable, the corresponding non-elected process claims (Claims 41-51) should be rejoined (MPEP §821.04¹).

The present claims are directed to a cosmetic article comprising a substrate and at least one breakable capsule associated with the substrate that wet the substrate upon being broken (e.g., see Claim 1). Additional embodiments of the article include association with a container which has a means to break the capsule (Claims 31 and 105), production of an exothermic reaction upon breaking the capsule(s) (Claims 52 and 105), a moisture impermeable ply included in the substrate (Claim 82), and pockets containing the breakable capsule (Claims 95 and 114).

In the Office Action, the Examiner has rejected Claims 1-40 and 52-114 under 35 U.S.C. § 103(a) in view of the combination of WO 01/54661 ("Beck") and U.S. 2,790,982 ("Schneider"). This rejection is untenable for the following reasons.

Beck is directed to "substantially dry" articles for personal cleansing containing cleansing and conditioning agents that are "water-activated," i.e., wetted by immersion in water (page 56 of Beck). Schneider describes an article which contains a gelatin capsule carrying any number of creams, liquids, and pastes that can be used for cleaning shoes, glasses, and furniture as well as for applying cosmetics (see col. 3, lines 23-25 and col. 4, lines 31-44). In view of these descriptions, the Examiner has concluded that the present invention would have been obvious to "provide a disposable, easily stored device for the

¹ "where the application as originally filed discloses the product and the process for making and/or using the product, and only claims directed to the product are presented for examination, when a product claim is found allowable, applicant may present claims directed to the process of making and/or using the patentable product."

home or travel in one package” (page 4 of the Office Action). Applicants respectfully disagree.

First, there are a number of claims which define embodiments of the article that are not addressed in the Office Action and, more importantly, are not described in the cited prior art. Specifically, the prior art does not describe a container with a means to break the capsule (e.g., as in Claims 31 and 105) or the production of heat via an exothermic reaction when the capsules are broken (as in Claim 52). Therefore, the rejection as it applies to these claims should be withdrawn.

Second, to the remaining claims not defined by the above, the rejection is untenable because the combination of prior art provides no description or suggestion to make the modifications suggested by the Examiner. Specifically, Beck describes that the dry articles which contain cleansers must be wetted by immersion in water or placed in a stream of water for “activation” (see page 56 of Beck). In other words, the description of Beck is concerned with keeping the active materials, e.g., surfactants and conditioners, separate from the activator until just prior to use. This is different from the articles described in Schneider because Schneider is concerned with delivering a pre-mixed composition upon breakage of the capsules and is similar to pre-moistened articles that deliver ready-to-use compositions right out of the package. Since Beck is concerned with keeping the active agents away from water whereas Schneider is concerned with supplying a pre-mixed, ready-to-use composition, they teach opposite solutions to similar problems and would not have been combined. For further guidance on this point, Applicants direct the Examiner’s attention to MPEP § 2141.02: “PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS.”

Furthermore, the articles of Beck would not have been modified or combined with Schneider because each specifically relates to the discovery of an optimized article to achieve

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a desired way to deliver active compositions. Therefore, each of the disclosures is limited to their unique findings and provides no indication whatsoever that the disclosures would be applicable in other configurations as the one claimed in this application. This argument is further supported by the fact that Beck, which was filed in January 2000, does not describe anything relating to the inclusion of breakable capsules notwithstanding the fact that breakable capsules were known since 1957, which is when Schneider issued. In view of the foregoing, Applicants request that the rejection be withdrawn.

Applicants also request a return initialed, signed, and dated copies of the PTO 1449 forms filed as an Information Disclosure Statement on July 1, 2003 and July 29, 2003. For reference, copies of those Information Disclosure Statements are attached.

Finally, Applicants request allowance of this application.

Respectfully submitted,

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